

§ 42.7 What does due process in a formal disciplinary proceeding include?

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts related to the alleged violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student's record that the school will consider in rendering a disciplinary decision.

(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the Act requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student's parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

§ 42.8 What are a student's due process rights in a formal disciplinary proceeding?

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student's parents or guardians (or their designee);

(b) The right to be represented by counsel (legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student's behalf and to confront and examine all witnesses;

(d) The right to the record of the disciplinary action, including written findings of fact and conclusions;

(e) The right to administrative review and appeal under school policy;

(f) The right not to be compelled to testify against himself or herself; and

(g) The right to have an allegation of misconduct and related information expunged from the student's school record if the student is found not guilty of the charges.

§ 42.9 What are victims' rights in formal disciplinary proceedings?

In formal disciplinary proceedings, each school must consider victims' rights when appropriate.

(a) The victim's rights may include a right to:

(1) Participate in disciplinary proceedings either in writing or in person;

(2) Provide a statement concerning the impact of the incident on the victim; and

(3) Have the outcome explained to the victim and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the victim is the actual victim, not his or her parents or guardians.

§ 42.10 How must the school communicate individual student rights to students, parents or guardians, and staff?

Each school must:

(a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;

(b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;